

Worker who can't perform her job isn't entitled to intermittent leave

While Minnie Hatchett was on a business trip, a hotel skylight crashed down on her head. As a result of her injuries, she could perform routine work, such as answering phones and processing the mail, but not all her former duties as a college business manager.

After Hatchett took an extended leave, the college decided to follow through on an earlier plan to replace her position with a dean of administrative services. The president offered Hatchett a choice of three part-time jobs at half her previous salary. She declined the jobs, and the college hired someone she had trained to become the new dean.

Hatchett argued that the college violated the Family and Medical Leave Act (FMLA) by not allowing her to return to work on an intermittent basis and build up to full time. But the court threw out her case.

In the first reported opinion on this issue, the 8th U.S. Circuit Court of Appeals made it clear that even an employee requesting intermittent leave under the FMLA must be able to perform the essential functions of the job. Plus, an employee is not entitled to be restored to a position when she still can't do the work at the end of the FMLA leave. (*Hatchett v. Philander Smith College*, No. 00-1693, 8th Cir., 2001)

Advice: You don't have to allow an employee to stay in a position that she cannot perform. The court also said Hatchett wasn't protected by the Americans with Disabilities Act because she couldn't perform the essential functions of the job.